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Attorney for Defendant  
MICHAEL R. PAPAYANS

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

CORY SPENCER, an individual;  
DIANA MILENA REED, an  
individual; and COASTAL  
PROTECTION RANGERS, INC., a  
California non-profit public benefit  
corporation;

Plaintiffs,

v.

LUNADA BAY BOYS; THE  
INDIVIDUAL MEMBERS OF THE  
LUNADA BAY BOYS, including but  
not limited to SANG LEE, BRANT  
BLAKEMAN, ALAN JOHNSTON aka  
JALIAN JOHNSTON, MICHAEL  
RAE PAPAYANS, ANGELO  
FERRARA, FRANK FERRARA,  
CHARLIE FERRARA, and N.F.; CITY  
OF PALOS VERDES ESTATES;  
CHIEF OF POLICE JEFF KEPLEY, in  
his representative capacity; and DOES 1  
– 10,

Defendants.

Case No. 2:16-cv-2129-SJO (RAOx)

**REPLY BY DEFENDANT MICHAEL  
R. PAPAYANS REGARDING  
MOTION TO DISMISS FOR LACK  
OF SUBJECT MATTER  
JURISDICTION; MEMORANDUM  
OF POINTS AND AUTHORITIES**

[Fed. Rules Civ. Proc., Rule 12(b)(1)]

Date: July 25, 2016  
Time: 10:00 a.m.  
Place: Courtroom No. 1  
Second Floor  
312 North Spring Street  
Los Angeles, California 90012

Hon. S. James Otero

Defendant MICHAEL R. PAPAYANS submits this Reply regarding his  
Motion to Dismiss this action pursuant to Rule 12(b)(1) of the Federal Rules of Civil  
Procedure due to lack of subject matter jurisdiction.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. The Court’s Discretion Regarding Supplemental Jurisdiction**

The Court today ruled that Plaintiffs have stated a federal equal protection claim. In light of this ruling, Defendant defers to the Court as to the exercise of supplemental jurisdiction over the state law claims. If the Court exercises such supplemental jurisdiction, Defendant reserves the right to raise the issue again. “While the district court’s power to exercise jurisdiction under the ‘same case or controversy’ requirement in 28 U.S.C. § 1367(a) is one ordinarily resolved on the pleadings, the court’s decision to exercise that jurisdiction ‘is one which remains open throughout the litigation.’” *Innovative Home Health Care, Inc. v. P.T.-O.T. Associates of the Black Hills*, 141 F.3d 1284, 1287 (8<sup>th</sup> Cir. 1998).

**II. Admiralty Jurisdiction May Not Be Based on Information and Belief**

In regard to admiralty jurisdiction, the Complaint alleges one specific injury suffered in the water by a Plaintiff. In January 2016, an unidentified individual “intentionally ran [Plaintiff Cory] Spencer over with his surfboard and sliced open Spencer’s hand.” Complaint, ¶ 21. Spencer also alleges that, in February 2016, he apparently “observed” from a “bluff” unidentified individuals “threaten and taunt [other] surfers.” *Id.* It is not clear what Spencer observed, how badly his hand was injured, or what he claims as damages.

By contrast, the entire lawsuit in the Florida district court decision “grew out of” the accident between the surfer and the swimmer. *Davis v. City of Jacksonville Beach, Florida*, 251 F.Supp. 327, 328 (M.D.Fla. 1965). Similarly, admiralty jurisdiction also existed over tort claims by two women who were seriously injured when thrown off a jet-ski in San Diego’s Mission Bay. *In re Mission Bay Jet Sports, LLC*, 570 F.3d 1124, 1125 (9<sup>th</sup> Cir. 2009).

1 This lawsuit is not based on Spencer's hand injury. This lawsuit asserts  
 2 admiralty jurisdiction based on allegations regarding access to the beach. The  
 3 alleged maritime incidents, however, are all on "information and belief" and  
 4 involved other surfers, swimmers, or visitors. Complaint, pp. 9-10, ¶ 18.

5 "Allegations of federal subject matter jurisdiction may not be made on the  
 6 basis of information and belief, only personal knowledge." *Lyerla v. AMCO Ins.*  
 7 *Co.*, 462 F. Supp. 2d 931, 931 (S.D.Ill. 2006) (citing *Am.'s Best Inns, Inc. v. Best*  
 8 *Inns of Abilene, L.P.*, 980 F.2d 1072, 1074 (7<sup>th</sup> Cir. 1992) (in diversity action, "only  
 9 the affidavit made on personal knowledge has any value ('to the best of my  
 10 knowledge and belief' is insufficient), ...because it says nothing about citizenship.")

11 Information-and-belief allegations are not sufficient for admiralty jurisdiction.  
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13 DATED: July 12, 2016

HAVEN LAW

15 By: s/ Peter T. Haven  
 16 Peter T. Haven  
 17 Attorney for Defendant  
 18 MICHAEL R. PAPAYANS  
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